

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
-vs-)	Docket No. 15-0608
)	
The Peoples Gas Light and Coke Company,)	
Integrys Energy Group, Inc.,)	
And Wisconsin Energy Corporation)	
)	
Investigation concerning possible violation of)	
Section 5-202.1 of the Public Utilities Act)	

INITIAL PLEADING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES the Staff of the Illinois Commerce Commission, by and through its undersigned counsel, and for its Initial Pleading, states as follows:

I. Procedural History

1. On November 18, 2015, the Commission entered an Order initiating the above-captioned proceeding (“Initiating Order”), for the stated purpose of “determin[ing] whether Peoples Gas, Integrys or WEC knowingly misled or withheld material information from the Commission at its May 20, 2015 Open Meeting[,]” in violation of Section 5-202.1 of the Public Utilities Act. (Initiating Order, 2.)

2. In the Initiating Order, the Commission further directed that “Peoples Gas, Integrys and WEC shall proceed first with a pleading and submit in this docket direct testimony ... setting forth its legal and factual position(s) responding to the Staff Report, and all parties shall file subsequent pleadings in a manner set forth by the Administrative Law Judge thereafter.” Id. at 3.

3. On or about December 9, 2015, the matter was convened for status before a duly-appointed Administrative Law Judge, at which time a schedule was set. (Tr. 6-7, December 9, 2015.) Pursuant to the schedule thus set, the Respondents (Peoples Gas, Integrys and WEC) were to file their initial pleading on December 23, 2015, with Staff and Intervenors to file their respective initial pleadings and/or testimony on February 4, 2016. Id. at 7.

Respondents filed their initial pleading on December 23, 2015, in both public and confidential form. *See, generally, Initial Pleading of The Peoples Gas Light And Coke Company, Integrys Holding, Inc., and WEC Energy Group, Inc. (“Initial Pleading.”)* On January 20, 2016, Respondents filed a revised Initial Pleading. The only substantive change was to delete a name listed on page 5, in paragraph 12.

II. The May 20, 2015 Commission Meeting

4. On May 20, 2015, Charles Schrock, Chairman and CEO of Integrys; John Kleczynski, President of Peoples Gas; and James Schott, Executive Vice President and CFO of Integrys, appeared before the Commission at its regularly-scheduled open meeting to discuss and present the Peoples Gas / Integrys position regarding the Liberty Consulting audit report, which was, in general, critical of Peoples Gas’ administration of the Advanced Main Replacement Program. *See, generally, Tr., 3, et seq. (May 20, 2015).*

5. In introductory remarks, several members of the Commission expressed concern regarding cost estimates. Commissioner McCabe observed that “[a]ccording to the [Liberty] audit [report]... the company could not credibly estimate the cost of the AMRP[.]” Id. at 33:4-7. Commissioner Edwards expressed “shock[]” and

“disappoint[ment]” that it appeared from the Liberty audit report “that an accurate estimate of the cost of the AMRP is not possible.” Id. at 34:22-35:3. Commissioner Rosales stated that “[t]he most disturbing piece of this audit in my reading is the inability of Peoples Gas to put a current, accurate cost on the AMRP.” Id. at 36:1-3.

6. In the course of that open meeting, Commissioner Edwards asked Mr. Schrock whether he “agree[d] [that] there is an inability to put an estimate on the cost of the [advanced main replacement] program[.]” Id. at 52:19-20. In response, Mr. Schrock stated that he thought “the characterization that Mr. [Gene] Beyer [Chief of the Commission’s Public Utilities Bureau] made is accurate that we have not developed a comprehensive model to provide that sort of estimate.” Id. at 52:21-53:2. He added that “[t]he estimates that we did in the past were based on a different approach and developing a different approach.” Id. at 53:2-3.

7. Shortly thereafter, Commissioner Rosales asked Mr. Schrock, “how far along do you believe Peoples Gas is right now and when will Peoples be capable of estimating the completed cost with some basic level of professional accuracy?” Id. at 56:20-57:2. Mr. Schrock deferred this question to Mr. Kleczynski, who responded as follows:

As far as the cost model, that is one of those recommendations that we are moving forward on, so we have brought in an outside consultant to help us pull that model together, and we anticipate in the first juncture where we are going to need to report on our progress in Phase II that we have a cost model that we like to come back and talk to you about.

Id. at 57:18-58:3.

8. It is undisputed that neither Mr. Schott, Mr. Kleczynski, nor Mr. Schrock disclosed to the Commission in the course of the May 20, 2015 Open Meeting the

existence of an estimate that the AMRP might cost approximately \$8 billion to complete.

See, generally, Id. at 2-63.

III. Applicable Law

9. Section 5-202.1 of the Illinois Public Utilities Act provides, in relevant part, that:

(a) Any person or corporation ... who knowingly misrepresents facts or knowingly aids another in doing so or knowingly permits another to misrepresent facts through testimony or the offering or withholding of material information in any proceeding shall be subject to a civil penalty. Whenever the Commission is of the opinion that a person or corporation is misrepresenting or has misrepresented facts, the Commission may initiate a proceeding to determine whether a misrepresentation has in fact occurred. If the Commission finds that a person or corporation has violated this Section, the Commission shall impose a penalty of not less than \$1,000 and not greater than \$500,000. Each misrepresentation of a fact found by the Commission shall constitute a separate and distinct violation. In determining the amount of the penalty to be assessed, the Commission may consider any matters of record in aggravation or mitigation of the penalty, as set forth in Section 4-203, including but not limited to the following:

(1) the presence or absence of due diligence on the part of the violator in attempting to comply with the Act;

(2) any economic benefits accrued, or expected to be accrued, by the violator because of the misrepresentation; and

(3) the amount of monetary penalty that will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with the Act.

220 ILCS 5/5-202.1

IV. Admissions Made By Respondents in Their December 23, 2015 Pleading

10. Respondents admit that “[o]ne thing Peoples Gas understood Liberty to be recommending as part of the investigation phase (‘Phase One’) of the audit was for Peoples Gas to develop an updated estimate for the total costs of the AMRP program.”

Initial Pleading, ¶1.

11. Respondents admit that, in response thereto, Jacobs Engineering Group (Jacobs) began work to develop a new cost estimate model for the AMRP in July or August of 2014. Id., ¶2.

12. Respondents admit that, on November 7, 2014, a senior Jacobs employee distributed a copy of this cost estimate model to, among other person, three employees of Peoples Gas and affiliated service companies. Id., ¶4.

13. Respondents admit that the cost estimate model distributed to Peoples Gas and affiliated employees included a “cost estimate for the AMRP contained in this preliminary draft [that] exceeded \$8 billion[.]” Id.

14. Respondents admit that revised versions of this draft were circulated to Peoples Gas employees on December 29, 2014. Id., ¶5.

15. Respondents admit that on January 6, 2015, “Jacobs made a presentation to representatives of Peoples Gas regarding its preliminary draft cost estimate model.” Id., ¶6.

16. Respondents admit that one of the representatives for Peoples Gas attending the Jacobs’s January 6, 2015 presentation was Mr. Kleczynski. Id.

17. Respondents admit that “from on or about January 8, 2015, through May 2015, employees of Peoples Gas worked on reviewing, evaluating, and attempting to validate Jacobs' preliminary draft cost estimate model and verifying the assumptions upon which it was based.” Id., ¶7.

18. Respondents admit that, on March 27, 2015, Mr. Kleczynski attended a meeting at “which a decision was made to retain a third-party consultant to review and validate the design of Jacobs' preliminary draft cost estimate model.” Id., ¶8.

19. Respondents admit that, on April 3, 2015, “Peoples Gas issued a Request for Proposal for a third-party consultant to provide an independent assessment of Jacobs' preliminary draft cost estimate model[,]” ultimately accepting the proposal of an entity called Cotter Consulting. Id., ¶9.

20. Respondents admit that, on April 29, 2015, Mr. Kleczynski, Mr. Schrock and Mr. Schott attended a meeting at which a Peoples Gas employee “made a presentation regarding the Jacobs preliminary draft cost estimate model, which showed a preliminary draft of the total estimated project cost for AMRP in excess of \$8 billion.” Id., ¶10.

21. Respondents admit that, on May 12, 2015, Mr. Kleczynski, Mr. Schrock and Mr. Schott attended a meeting at which a Peoples Gas employee “made a presentation regarding the Jacobs preliminary draft cost estimate model, which showed a preliminary draft of the total estimated project cost for AMRP in excess of \$8 billion, and discussed the selection of Cotter Consulting to perform an independent review and validation of the model. Id., ¶12.

V. Factual Matters Adduced in Discovery

22. Documents provided by Respondents show that Jacobs began work on what Respondents describe as “the Jacobs preliminary draft cost estimate model” no later than July 14, 2014. Staff Ex. 1.0 at 6, *citing* RSP_000156.

23. Documents provided by Respondents show that, when issuing the Request for Proposal referred to in paragraph 9 of Respondents' Initial Pleading (see above, ¶19), Peoples Gas did not refer to the model as “the Jacobs preliminary draft cost estimate

model,” but rather as “Peoples Gas Capital Construction Model.” Staff Ex. 1.0 at 7, *citing* Peoples Gas RFP.

24. Documents provided by Respondents show that, when describing the scope of work to be undertaken pursuant to the Request for Proposal, Peoples Gas referred to it as “provi[sion of] an independent assessment of the current Capital Construction Program Forecast-Model (2015).” Staff Ex. 1.0 at 7, *citing* Peoples Gas RFP.

25. Documents provided by Respondents show that the Jacobs employee who was primarily responsible for preparing the “Jacobs preliminary draft cost estimate model,” as it is referred to in Respondents’ Initial Pleading, or the “Peoples Gas Capital Construction Model,” as it is referred to in the Request for Proposal, had more than 30 years of project and construction management experience, and was retained by Peoples Gas to prepare the model. Staff Ex. 1.0 at 6, *citing* resume.

26. The documents referred to in paragraphs 22 through 25 above do not by any means constitute an exclusive list of the documents upon which Staff may rely in the further course of this proceeding. Staff reserves the right to identify and seek admission into evidence of such other documents or evidence as it may deem necessary or appropriate, consistent with the schedule established in this proceeding.

VI. Relief Sought By Staff Through This Pleading

27. The Staff requests that the admissions made by the Respondents in ¶¶10-21 herein be deemed conclusively admitted, without further proof being adduced.

28. The Staff requests that the ALJ find that the only remaining factual matter remaining in controversy in this proceeding is whether the existence of the \$8 billion cost

estimate produced by the “Jacobs preliminary draft cost estimate model” / “Peoples Gas Capital Construction Model” was “material information” within the meaning of Section 5-202.1(a).

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that the relief requested herein be granted.

Respectfully submitted,

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